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IN THE
SUPREME COURT OF THE
UNITED STATES

October Term 1968

No. 1257

HELEN LOPO, By her Guardian
Ad Litem, SYLVIA TINA LOPO,

Plaintiff and Appellant,

vs.

SAKS FIFTH AVENUE, a New York
Corporation,

Defendant and Appellee.

SUPPLEMENT TO JURISDICTIONAL STATEMENT AND REPLY TO APPELLEE'S MOTION TO DISMISS

ON APPEAL FROM THE DISTRICT COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION TWO

HELEN LOPO, by her Guardian
Ad Litem, SYLVIA TINA LOPO
In Propria Persona

16366 Royal Hills Drive
Encino, California

In Propria Persona for
Plaintiff-Appellant

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SUPPLEMENT TO JURISDICTIONAL STATEMENT
AND REPLY TO APPELLEE'S
MOTION TO DISMISS

Appellant Helen Lopo, by and through her "Guardian Ad Litem," Sylvia Tina Lopo, hereby supplements the Jurisdictional Statement with additional cited cases and makes reply to Appellee's Motion to Dismiss.

OPINION BELOW

Appellant's Jurisdictional Statement, and Record was filed and the appeal docketed on April 14, 1969. - The Opinion of the District Court of Appeal of the State of California was annexed as Appendix "A". - The Petition for Rehearing was denied on October 28, 1968. - Appellant's Petition for Hearing in the Supreme Court

of California was denied on December 4, 1968. - Copy of the Judgment, or Remittitur as to its date of entry (December 10, 1968) was annexed as Appendix "B". - Order Extending Time to Docket Appeal and File Record was annexed as Appendix "C". - Certificate from the Supreme Court of California, Dated 5, March, 1969, was annexed as Appendix "D". - District Court of Appeal's Docket Entry Sheet is annexed hereto as Appendix "E".

THE NOTICE OF APPEAL WAS TIMELY FILED

Appendix "B" to the Jurisdictional Statement is comprised of three pages; all are stamped with the filing date of December 18, 1968. - Page three states: "***It is Ordered, Adjudged and Decreed by the Court that the judgment is affirmed.*** ***I Clay Robbins, Jr. Clerk of the Court of Appeal, Second Appellate District, State of California, do hereby certify that the foregoing is a true copy of an original judgment entered on October IO, 1968, and now remaining of record in my office.

Dated: December 10, 1968.

Clay Robbins Jr., Clerk
By J. Kavanagh
Deputy"

The foregoing Judgment, or Remittitur, is the Final Decree and the last California Order.

This is also substantiated by Appendix

"D", Certificate from the Supreme Court of California, dated 5 March, 1969, which states: - "The record in the above case discloses that the judgment of the Court of Appeal, was final on December 10, 1968, and on that date the remittitur was issued to the county clerk."

THE CONTROLLING STATUTE

"Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court shall be taken or applied for within 90 days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding 60 days."

28 U.S.C. § 2101(c)

Therefore, March 10, 1969, was the 90th day after the issuance, or entry, of such judgment or decree.

"In determining what is a 'final judgment' or 'decree' within section of the Judicial Code vesting the Supreme Court with appellate jurisdiction from final judgment or decrees in state courts, the Supreme Court is not controlled by designation applied to it in state practice."

Jud. Code § 237, 28 U.S.C.A. § 344.

"Where a state statute provides that the decision of the Supreme Court of the state shall be final, but that judgment shall issue thereon, the issuance of the judgment, and not the filing of the decision, fixes the date within three months from which steps must be taken under the act of September 6, 1916, for review in the Supreme Court of the United States."

Puget Sound Power and Light Company v. County of King, 44 S.Ct. 261, 264 U.S. 22, 68 L.Ed. 541.

Cole V. Violette, 319 U.S. 581, 63 S.Ct. 1204, 87 L.Ed. 1600.

"An opinion of former Circuit Court of Appeals for Second Circuit was merely an 'opinion' rather than a 'judgment' though it gave dates of argument and decision and stated that order was reversed, and subsequent 'order for mandate' was the 'judgment' from whose date time of filing petition for certiorari should be computed."

Commissioner of Internal Revenue v. Estate of Edward T. Bedford et al, 65 S.Ct. 1157, 325 U.S. 283, 89 L.Ed. 1161.

Therefore, the Notice of Appeal was timely filed on March 10, 1969.

A. DOCKET ENTRIES ARE VOID OF ENTRY-DATES

It is a well-established rule that counsel or a party consulting the docket should not be required to search the record "as to the nature and effect of what has been done, or as to the timeliness of future proceedings." Any entry void of its date of entry shall be construed as non-existent and void, when pertaining "to the nature and effect of what has been done or as to the timeliness of further proceedings." No where on the Docket Record of the District Court of Appeal can the date of December 4, 1968, be found, and therefore, is non-existent.

Appellant would like to call the Court's attention to the District Court of Appeal's Entries (a copy of which is contained in the Appendix herein) designating the Denial of Hearing, which is ambiguous on its face so that a party consulting the docket has "a reasonable basis for doubt, as to the nature and effect of what has been done and as to the timeliness of further proceedings."

The District Court of Appeal's own Docket Entries allow the Denial of Hearing no basis for time computation.

"Since the running of time for motions after judgment and for appeal begins from the entry of judgment, such entry, though not necessarily in any particular forms of words, should be unambiguous on its face so that counsel or a party consulting the docket will have no reasonable basis for

doubt as to the nature and effect of what has been done or as to the timeliness of further proceedings."

Danzig v. Virgin Isle Hotel, (CA 3d, 1960) 278 F2d 580, 582.

B. APPEAL IS PROPERLY PROSECUTED

The appeal was timely docketed by Appellant on April 14, 1969, following the Order of Mr. Justice Douglas extending the time for docketing the appeal and filing the record to and including April 14, 1969.

Appellee's "Motion To Dismiss Appeal To Supreme Court", pursuant to Rule 14(2) was filed on March 25, 1969, in the California Court with the expressed knowledge, as stated in Appellee's said motion, of Appellant's then-pending "Motion To Extend Time To File Record and Docket Appeal."

According to Rule 14, said Motion is to be presented to the court possessed of the Record (the Court of Appeal of the State of California, Second Appellate District) prior to the docketing of the Appeal. Once the Appeal has been docketed by the Appellant, Rule 14 does not provide for the Appellee's said Motion. Furthermore, 14(2) does not provide for Appellee to renew said Motion once Appeal is docketed in this Court.

Appellant has properly prosecuted her Appeal by timely filing her Notice of

Appeal, on March 10, 1969, the earliest date upon which it was possible for Appellant to file (as Appellant did not learn of the Entry of Judgment until late in the afternoon of Friday, March 7, 1969). In said Notice of Appeal, Appellant designated the record for certification and transmittal to the United States Supreme Court.

On March 17, 1969, Appellant inquired as to whether the Record was ready for transmittal to this Court; Appellant was informed that her Notice of Appeal was filed that day bearing the March 10, 1969, Receiving Date, and the Clerk of the District Court of Appeal requested a second Designation of Record. Appellant renewed said Designation that day, March 17, 1969, by filing a second Request for Records; said request was denied on March 28, 1969. Appellant was persistent and after much reluctancy, the Clerk in the California Court of Appeal certified the Record for transmittal to this Court which received and filed Appellant's Record on April 14, 1969.

Appellant has timely docketed her Appeal to this Court.

The California Court of Appeal (at the request of the Appellee) placed Appellee's said Motion off-calendar.

Appellant's "Motion To Extend Time To File Record and Docket Appeal" correctly stated the Judgment Entry of December 10, 1968.

The Final Decree and last California Order (dated December 10, 1968) was filed

on December 18, 1968, which states: "It is Ordered, Adjudged and Decreed by the Court that the Judgment is affirmed***."

The Certificate of the Supreme Court of California, dated March 5, 1969, states: "The record in the above case discloses that the Judgment of the Court of Appeal was final on December 10, 1968, and on that date the Remittitur was issued to the County Clerk."

Therefore, Appellant respectfully submits that she filed a timely Notice of Appeal, and pursuant to the Order of Mr. Justice Douglas, Appellant further submits that she has timely docketed her Appeal.

(Cases Cited)

"This appeal was docketed 22 days after expiration of the *** period provided by the Rule. During that period, appellant made no application for an enlargement of time, *** nor did any explanation accompany the untimely docketing of the appeal. The jurisdictional statement itself is silent on the subject. *** Appellant's counsel, upon reporting the misunderstanding to a member of this Court, could have unquestionably have obtained an enlargement of the time to docket the case extending even beyond the 22 days within which the record was actually filed."

Pittsburgh Towing Company v. Mississippi Valley Barge Line Company et al, 87 S.Ct. 195 (1966), 385 U.S. 32, 17 L.Ed. 2d 31.

Appellant cites the above case, and submits that she did properly conform to all acts that the Court said should have been done.

Therefore, Appellant "unquestionably obtained an enlargement of time to docket the case."

Appeal was not docketed until "after the time provided in Rule 13(1) expired. This defect, however is not jurisdictional. - Id."

Johnson v. Florida, 88 S.Ct. 1713 (1968) at 1714.

"Fact that appeal, notice of which was timely filed, was not docketed until 56 days after time provided by court rule had expired did not constitute jurisdictional defect. Supreme Court Rules, Rules 11, subd. 1, 13, subd. 1, 28 U.S.C.A."

Johnson v. Florida, 88 S.Ct. 1713 (1968), 391 U.S. 596

There are no grounds for Appellee's Motion to Dismiss the Appeal for Lack of Prosecution. Appellee's request to renew said motion on the ground of non-prosecution in this Court is without foundation.

GROUNDS ON WHICH JURISDICTION IS INVOKED

I

THE NATURE OF THE PROCEEDING

Appellant, Helen Lopo was a charge account customer at Appellee's stores for approximately the past 12 years, at their Detroit, Michigan, and their Beverly Hills, California stores.

However, Appellant had accrued an amount owed on her charge account, and while shopping with her daughter, Dolores, as invited guests at Appellee's Beverly Hills store, where both were authorized to sign for purchases, Appellant and her daughter were seized and placed under false imprisonment; repeated demands were made that Appellant pay her accrued bill, when she did not pay, the Beverly Hills Police were called. Six (6) hotly pressed demands were made that she pay up or else; when she did not pay, her purse was forcefully taken from her; she was knocked down and placed under arrest, and falsely charged with forgery, of charging to various accounts.

Appellant submits that the false imprisonment and arrest was a conspiracy; the arrest was without issue of warrant, and from testimony of the arresting officer, Mr. Devich, we find that when he contacted Mr. Plotnick at Saks, that they stepped out into the hall and with just the two of them present, Mr. Plotnick told him that "Mrs. Lopo had signed her name to

various charge accounts on that date". So on this "information"--is the reason that he placed Mrs. Lopo under arrest for forgery (R.T., Page 464, line 1 to Page 465, Line 10).

Appellant was so held under imprisonment, until forced payment of the balance owed on Appellant's accrued charge account was forcefully taken from Appellant at the Beverly Hills Police Station.

The record and entire testimony throughout this trial, substantiates that Mrs. Lopo was in the Appellee's store as an invited guest, making purchases on her own charge account and signing her own name to the purchase slips. But never to any other, or various charge accounts as told to Mr. Devich, the arresting officer, by Mr. Plotnick.

Therefore, Appellant's unlawful arrest and imprisonment for debt is in direct violation of, Title 18, Section 241, United States Code. Chapter 13, Civil Rights.--Conspiracy, or concerted action, against rights of citizens.

> "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same."

Also, violation of Appellant's rights under Section 1, the Due Process Clause

of the Fourteenth Amendment of the United States Constitution.

II

THE JUDGMENT OR DECREE SOUGHT TO BE REVIEWED

The judgment or decree sought to be reviewed was entered on December 10, 1968. The Notice of Appeal to this Court was filed in the District Court of Appeal, Second Appellate District, Division Two, State of California on March 10, 1969, which contained Appellant's first request for the record. - A second request for the record was filed on March 17, 1969, and denied on March 28, 1969. - On March 29, 1969, the Honorable Justice Douglas granted Appellant's motion to extend time to docket the appeal and file the record, to and including April 14, 1969.

The Jurisdictional Statement, and Record was filed and the Appeal docketed on April 14, 1969.

III

THE STATUTORY PROVISIONS BELIEVED TO CONFER ON THIS COURT'S JURISDICTION OF THE APPEAL IS 28 U.S.C. SEC. 1257(1)

"Where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity."

IV

VIOLATIONS OF APPELLANT'S UNITED STATES CONSTITUTIONAL RIGHTS, UNITED STATES CODE OF CIVIL RIGHTS, AND OTHER CASES BELIEVED TO SUSTAIN JURISDICTION

A. CONSPIRACY, APPELLANT'S UNLAWFUL ARREST, AND IMPRISONMENT FOR DEBT

"U.S. Miss. 1966. Statute prohibiting conspiracy to injure, oppress, threaten or intimidate any citizen in free exercise or enjoyment of any right or privilege secured to him by Constitution or laws of United States extends to conspiracies with respect to rights and privileges protected by Fourteenth Amendment and extends to conspiracies, otherwise in scope of section, participated in by officials alone or in collaboration with private persons.

18 U.S.C.A. § 241; U.S.C.A. Const. Amend. 14."

U.S. v. Price, 86 S.Ct. 1152, 383 U.S. 787, 16 L.Ed. 2d 267.

"Statute prohibiting conspiracy to injure, oppress, threaten or intimidate any person in free exercise or enjoyment of any right or privilege secured to him by Constitution or laws of United States embraces all of rights and privileges secured to citizens by all of Constitution and all of laws of United States and was not intended to be confined to rights that are conferred by or flow from federal government as distinguished from those secured or

confirmed or guaranteed by Constitution.

18 U.S.C.A. § 241; U.S.C.A. Const. Amend. 14. - Id."

In the instant case, one of the means of accomplishing the object of the conspiracy, was by Appellee giving false "information" to the police, to effect Appellant's arrest on a felony charge, thereby involving the police to oppress, intimidate and force payment of a debt. The arrest was without issue of warrant, and from testimony of arresting officer, Mr. Devich, we find that when he contacted Mr. Plotnick at Saks, that they stepped out into the hall, and with just the two of them present, Mr. Plotnick told him that "Mrs. Lopo had signed her name to various charge accounts on that date." So on this "information"--is the reason that he placed Mrs. Lopo under arrest for forgery (R.T., Page 464, line 1 to Page 465, line 10).

B. CAPTAIN OF BEVERLY HILLS DETECTIVE BUREAU ACCUSED APPELLEE OF USING POLICE IN CONSPIRACY

To substantiate, for this Honorable Court's convenience, that this issue was brought before the trial court, we present that relevant part of the testimony of Mr. Ray Borders, who was Captain of the Beverly Hills Detective Bureau, at the time of incident (R.T., Page 15, Lines 11 through 20).

"Q. You have told us, sir, of all of your conversation with Mr. Plotnick on this occasion?

A. I told Mr. Plotnick that it seemed to me he had himself in a jackpot, that it looked as though he was trying to get the Police Department to pull the chestnuts out of the fire for him."

C. OFFER OF PROOF OF CONSPIRACY, THAT POLICE WERE USED TO FORCE PAYMENT OF ACCOUNT

"Q. By Mr. Caruso: Mr. Plotnick, will you please examine that Plaintiffs 3, that piece of paper on which you gave a receipt for the money.

My question is, when prior to December 19, 1959, had you given a receipt similar to that to any customer at Saks?***

"***Mr. Caruso: I would like to make an offer of proof.

The court: All right. Do so at the bench.

Mr. Caruso: If I am permitted to ask this question, my offer of proof is that we will show that Saks Fifth Avenue is using the Police Department as part of their coercion in getting money from this woman.

Since the gravamen of false imprisonment is the deprivation of her liberty, and this is an intricate part of that proof, we are being deprived of what I

think is the probable cause which is the gravamen of the false imprisonment.***

"***[The following proceedings were held in open court, within hearing of the jury.]

The Court: Read the question back, and you may answer the question.

[The Reporter read the question.]

The Witness: I don't recall ever giving any customer a receipt, a hand receipt. This was, I think, the first time it ever occurred."

(R.T., Page 420, line 7 to 12; R.T., Page 420, line 22 to Page 421, Line 9; R.T., Page 421, line 25 to Page 422, line 6.)

D. CONSPIRACY INSTRUCTIONS TO JURY REFUSED BY THE COURT

To further substantiate, that the issues of civil conspiracy was forcefully stressed before the court, and that the police were used by the Appellee to arrest, injure, oppress, threaten and force payment of Appellant's bill, we present Plaintiff's requested Special Jury Instructions No. 19 and No. 24. - Both were refused by the court.

Plaintiff's Special Jury Instruction No. 19

"You are instructed that a civil conspiracy exists when a preponderance of

the evidence shows that a concert of action exists among persons to unlawfully detain the Plaintiff without her consent and that the action is in furtherance of a common plan to commit a wrongful act and that the persons so acting had knowledge of the plan and its unlawful purpose. It is not necessary that a person join the plan at the time of its inception. Every one who enters into such a common plan is in law a party to every act previously or subsequently done by any of the other persons in pursuance of it.

The agreement between persons need not be proven by direct evidence but may be shown by circumstantial evidence that tends to show a common intent. The ultimate fact of such a plan is determined from those inferences which are natural and properly drawn from those matters directly proved.

In an action for damages for false imprisonment resulting from the acts of such persons, the major significance of a plant lies in the fact that it renders the Defendant liable for all the damages ensuing from the unlawful imprisonment irrespective of whether or not the specific individual personally caused such imprisonment, and regardless of the specific individual's degree of activity of participation in the commission of the alleged wrongful act of flase imprisonment.

Therefore, if you find that the Beverly Hills Police Officers, Bolander and Devich, unlawfully detained Plaintiff in a common plan with the Defendant, Saks Fifth Avenue, to collect the bill owing the

Defendant, Saks Fifth Avenue or wrongfully detained the Plaintiff until the alleged amount due was paid, the Plaintiff may recover from the Defendant Saks Fifth Avenue, for all the damages resulting from acts of the individual conspirators.

Requested by Plaintiff
Refused
Rhone, Judge."

Plaintiff's Special Jury Instruction No. 24

- See, Reporter's Transcript page 571 -

Requested by Plaintiff
Refused
Rhone, Judge."

E. PLAINTIFF WRONGFULLY CHARGED TO ASSUME BURDEN OF PROOF, CONSPIRACY/ARREST WITHOUT WARRANT, SEARCH AND SEIZURE WITHOUT WARRANT, IMPRISONMENT FOR DEBT, TRIAL BY KANGAROO COURT AT POLICE STATION, NO DUE PROCESS OF LAW, FORCED PAYMENT AT POLICE STATION BEFORE RELEASE. - THESE ARE SUBSTANTIAL FEDERAL QUESTIONS - PRESENTED BY THIS APPEAL

Burden of Proof: - The Trial Court's failure to instruct the jury as to which set of facts of which there was evidence in the record, if any, constituted probable cause for an arrest was particularly prejudicial to interests of the Plaintiff in that the burden of proof is

on the Defendant to prove justification for an arrest, when arrest without warrant is pleaded. The jury had to make up its own mind as to what kind of evidence constituted probable cause to make an arrest, and then to determine that issue of law (properly to be determined by the court) in light of the court's instruction, above mentioned, that the burden in all respects was on the Plaintiff. (R.T., Pages 537-538) To force the Plaintiff to assume the burden of proof, was not due process of law. Therefore, is in violation of due process clause of the Fourteenth Amendment of the United States Constitution.

Watkins v. Oakland Jockey Club,
86 F.Supp. 1006, affirmed
183 F.2d. 440

New York Life Ins. Co. v. Rogers,
126 F.2d. 784

Riegel v. Hygrade Seed Co., Inc.,
47 F.Supp. 290

Probable Cause: - When a person has been detained and that detention is not for the investigation of a offense believed to have been committed at the time, then there is no defense of probable cause available to the defendant. This point was clearly established in the case of Moffatt v. Buffums, Inc., 21 Cal.App.2d 371.

In the instant case, it is shown beyond any doubt that Plaintiff-Appellant was not being detained for investigation on any grounds that she was stealing the property of another, or of any crime

suspected, but on the contrary, was detained for the sole purpose of forcing the payment of money owed for prior purchases. Therefore, is in violation of Title 18, Section 241, United States Code, Chapter 13, Civil Rights, - conspiracy or concerted action, against rights of citizens.

Also, in violation of Due Process Clause of The Fourteenth Amendment of the United States Constitution.

Due Process of Law: Conduct and false charges of the Appellee before the Appeal Court, and the State Supreme Court of California -- Appellee knowingly and intentionally violated Appeal Rules and Due-Process-of-Law, by submitting documents to the Appeal Court without serving such copies on the Appellant.

This document, dated October 26, 1968, made false charges of forgery that Appellant applied Attorney Ward Sullivan's name to briefs which Appellee charged were prepared by George Lopo, and false charges that Sylvia Lopo was a self-appointed attorney therefore not properly before that court. These charges, even if true (but definately not.), could not then be raised for the first time, and then to deliberately proceed to withhold notice from Appellant until the Supreme Court made its decision, based on such false information, of which the Appellant had no knowledge, or opportunity to answer such charges. For Appellant to be falsely charged and tried without her knowledge of such charges, is not Due-Process-of-Law. Therefore is in violation of the Due Process Clause of the Fourteenth Amendment of the United States

Constitution.

Appellant's failure to receive or learn of Defendant-Appellee's document, dated October 26, 1968, is unconstitutional.

Armstrong v. Manzo, 85 S.Ct. 1187 (1965), 380 U.S. 545

Appellant's Unlawful Arrest and Imprisonment For Debt, is a violation of her Constitutional Rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution, Section I, Clause 2: "---nor shall any State deprive any person of---liberty, or property, without due process of law."

Constitutional Law: "Fourth Amendment prohibition against unreasonable search and seizure is enforceable against the states through the Fourteenth Amendment.

U.S.C.A. Const. Amends. 4, 14."

Camara v. Municipal Court, 87 S.Ct. 1727 (1967), 387 U.S. 523.

Search and Seizures: - Appellant's rights under the Fourth Amendement which protects people--and not simply "areas"--against unreasonable search and seizure.-

"While it is well settled that upon a valid arrest a search of the person may be lawfully made and any evidence found thereon tending to establish the commission of a crime may be lawfully seized, nevertheless, if the arrest is unlawful the incidental search in connection therewith

is likewise unlawful and in violation of the constitutional rights of the person."

Weeks v. United States, 232 U.S. 383, 58 L.Ed. 652, 34 Sup. Ct. 341, L.R.A. 1915B, 834, Ann. Cas. 1915C, 1177.

Search and Seizures: - "Fourth Amendment protects people, not places. U.S.C.A. Const. Amend. 4.

Search and Seizures: - Fourth Amendment protects people, not simply areas, against unreasonable search and seizure. U.S.C.A. Const. Amend. 4.

Search and Seizure: - Wherever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures. U.S.C.A. Const. Amend. 4."

Katz v. United States, 88 S.Ct. 507 (1967), 389 U.S. 347.

The trial record substantiates that this was an unlawful arrest, without warrant, therefore an unlawful and "unreasonable" search and seizure without warrant, and that Appellee used the fruits (money) of the seizure for his own gain.

The trial record also substantiates, beyond all doubt, that Appellant suffered severe punishment and injuries inflicted upon her person by the false imprisonment, arrest, and physical assault during the unlawful and unreasonably search and seizure acts.

"We are here concerned with allegations

which squarely and indisputably involve state action in direct violation of the mandate of the Fourteenth Amendment--that no state shall deprive any person of life or liberty without due process of law. This is a direct, traditional concern of the Federal Government. It is an area in which the federal interest has existed for at least a century, and in which federal participation has intensified as part of a renewed emphasis upon civil rights."

United States v. Price, 86 S.Ct. 1152 (1966), 383 U.S. 787, 16 L.Ed.2d 267.

State-Court-Invalidation of Federal Law is involved in this instant case. All issues violate Constitutional Rights of Appellant, as are consistently and forcefully argued herein. And as presented in all of Appellant's State Court Briefs.

V

STATE COURT BRIEFS

A. APPELLANT'S OPENING BRIEF

Plaintiff's Special Jury Instruction No. 18 (page 28):

"You are further instructed that the right of personal liberty is guaranteed to every person by the Constitution of the United States, by the Constitution of the State of California, and by virtue of the law of the land.*** ***If you find that the Plaintiff was detained either as a result of the act of Mr. Mathis or Mr.

Plotnick in themselves wrongfully violating the personal liberty of the Plaintiff or as a result of the unlawful act of the Police Officers, as agents for Saks Fifth Avenue or authorized, encouraged, directed, procured or assisted in by Mr. Plotnick or Mr. Mathis and such detention was without legal justification.***"

This instruction embodied all the guarantees of the United States Constitutional Amendments, Five, Fourteenth Amend. Section I, and United States Code §241. Conspiracy.

However, all of the foregoing instruction was stricken out by the trial court, and when any mention was made as to the unlawful violation of Plaintiff's Constitutional Rights, in any modified instructions, that portion of the instruction was stricken out.

Also, see: Calls For Police, page 17. - Arrested For Forgery, page 8. - Taken To Police Station, page 9. - Placed Her Under Arrest Because of Information Given By Plotnick, page 25. - Collected Account From Her at Police Station, page 20.

B. APPELLANT'S REPLY BRIEF

Page 17; "Respondent had no reason whatsoever to suspect Appellant of the commission of a crime, but it was solely for the purpose of collecting a delinquent account and constituted a violation of her rights against imprisonment for debt under the provisions of Article I, Sec. 15 of the Constitution of the State of California."

issued."

Amendment 5

"Appellant was deprived of her liberty and property, without due process of law."

Amendment 6

"Appellant was held under threat and duress, and denied the right to have counsel (see R.T., page 251, line 13 to line 18)."

"The Appellant, Mrs. Helen Lopo, was also deprived of her Constitutional Rights under Article I, Section 3--Article I, Section 15--Article I, Section 19--Article I, Section 22, of the Constitution of California."

Also page 37:

(1) "Being wrongfully and illegally detained by the Defendant, Saks Fifth Avenue; that no crime had been committed at the time or prior to the detention, and that Defendant had no probable cause to believe that Plaintiff had committed a crime; and,

(2) Being falsely arrested by the Beverly Hills Police Officers in conjunction with, aided and abetted by and in conspiracy with the agents and employees of Saks Fifth Avenue."

Also, see page 22: "Now, Mrs. Lopo has been falsely imprisoned, arrested on suspicion of forgery, physically assaulted

(R.T., Page 263, line 1 to Page 264, line 26), also (R.T., Page 396, lines 23-26), browbeaten, and forced to pay a debt, while so held under threat and duress. She was told to:--Pay Saks and we will let you go--or would you rather be locked up?--Pay Saks or we will book, fingerprint and put you in jail. And Mrs. Lopo under these threats and duress, begged, no, please don't do that." (R.T., Page 250, lines 1-22.)

D. DISTRICT COURT OF APPEAL REFUSED TO SUPPORT AND DEFEND THE CONSTITUTION OF THE UNITED STATES AND THE CONSTITUTION OF CALIFORNIA

"3--Constitutional Obligations

It is the duty of all justices and judges of the Courts of California to support and defend the Constitution of the United States and the Constitution of California; in so doing, they shall fearlessly observe and apply fundamental limitations and guarantees."

California Rules of Court:
Appendix - Division II

Page 2. Appellant's Petition For Rehearing further states: "The court has yet to decide on legal issues such as, the trial court's Instruction No. 21, that charged the jury that the general burden of proof was on the Plaintiff. This is in error as stated by points and authorities submitted by Plaintiff. -

Search and Seizure, without warrant, unlawful and illegal use of money.

Violation of Mrs. Lopo's Constitutional Rights.

All other issues of material facts as contained in this petition."

STATEMENT OF THE CASE

It is indeed shocking to find that an occurrence such as this could really happen. When, as an invitee of Appellee, and while shopping in Appellee's store in Beverly Hills, Appellee illegally, and unlawfully, and without reasonable or probable cause, imprisoned the Appellant, and caused her to be arrested and taken to the police station on a false charge of forgery for the purpose of collecting money due Appellee from Appellant upon her open book, or charge account.

When Mrs. Lopo and her daughter, were grabbed by the arm and forced to go to the upstairs office of Saks, she told them that she was Mrs. Lopo and that they could verify this by her signature on the sales slips that she had just signed, and that they could compare this with her account signature (R.T., Page 224, line 1 to line 26). As this was a signature account, they had no charge-a-plate system. However, their reply was that her account was deliquent, they threw a check book in front of her, telling her to write a check and pay her bill. She said she couldn't as she had no checking account, but would have her husband put a check in the mail

over the weekend. This did not satisfy Mr. Plotnick and he continued to demand that she pay her bill (R.T., page 394, line 23 to page 395, line 16).

From the time that Appellee first apprehended the Appellant at its store, until her departure to the police station, the Appellee made six (6) hotly pressed specific demands on Mrs. Lopo that she pay her accured bill.

The arrest was without issue of a warrant, from the testimony of the arresting officer, Mr. Devich, we find that when he contacted Mr. Plotnick at Saks, that they stepped out into the hall and with just the two of them present, that from his discussion, is why he placed Mrs. Lopo under arrest. (R.T., page 464, line 25 to page 465, line 4.)

Now, Mrs. Lopo has been falsely imprisoned, arrested for forgery, physically assaulted, (R.T., page 263, line 1 to page 264, line 26) also (R.T., page 396, lines 23-26) browbeaten, and forced to pay a debt, while so held under threat and duress. She was told to:-- Pay Saks and we will let you go--or would you rather be locked up?--Pay Saks or we will book, fingerprint and put you in jail. And Mrs. Lopo under these threats and duress, begged, "No, please don't do that" (R.T., page 250, lines 1-22).

The Appellee took Mrs. Lopo's ledger card to the police station, knowing that the lady he had under arrest was Mrs. Lopo. Now at the police station, "Prior"

to the collection of the bill, the Appellee did not produce, receive, or even attempt to acquire any identification on the Appellant whatsoever. (R.T., page 419, lines 1-7.)

But Appellee did demand and force collection of the bill at the police station and gave the lady a receipt made out to Mrs. Lopo, thereby acknowledging her to be Mrs. Lopo. It should also be noted that Mrs. Lopo did not have possession of her purse, for it was only when Appellee handed her a receipt for the sum of $574.93, that they gave her the purse.

The District Court in its written Opinion ruled solely on the question of probable cause, and ignored all other issues.

Appellant's contention is that the Court erred in its instruction to the jury. The instruction permitted the jury to determine if Saks was legally justified in its action. Probable cause is a question of law for the Court.

SUBSTANTIALITY OF FEDERAL QUESTIONS

The questions raised in this case are without doubt the most vital Due Process, and Civil Rights issues encompassed in the United States Constitution. They reach the very core of our lives as free people. They, by constitutional guarantees, abolish imprisonment to force payment of a private debt.

For if this procedure to force collection of a debt is condoned, it means that any person in the United States, who becomes a debtor, is subject to seizure and imprisonment and physical assault to force payment of such debt.

I, do not believe that this Court can sanction the procedure under which a person is illegally seized, held and tried by a kangaroo court of conspirators (of no authority) at the police station, then forced to buy his freedom.

The right of a creditor to collect for an outstanding account is governed by rules of Civil Law and does not, under any stretch of the imagination, justify the false arrest and imprisonment of a person to accomplish that end.

I believe that the discussion above, demonstrates that the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral arguments, for their resolution.

CONCLUSION

For the foregoing reasons, jurisdiction should be granted. Appellee's Motion to Dismiss is completely without foundation and should be denied. Appellant's appeal was timely, in conformity to the statute, and is within the jurisdiction of this Court.

Appellant has properly prosecuted her appeal which presents very weighty and substantial federal questions resting at the

very pedestal of our United States Constitution. Appellant's appeal raises vital issues which formed the very basis from which grew the need for the Constitution of the United States.

WHEREFORE, Appellant respectfully submits that this Court grant jurisdiction.

Respectfully submitted,

HELEN LOPO, by her
Guardian Ad Litem,
SYLVIA TINA LOPO

In Propria Persons for
Petitioner-Appellant.

Civ 31906

SECOND DISTRICT, CIVIL NO. 31906

LOS ANGELES COUNTY

JUDGE 748299

BAYARD RHONE

HELEN LOPO BY HER GUARDIAN AD LITEM SYLVIA JINA LOPO
PLTF & APLT

VS

SAKS FIFTH AVENUE, ETC
DEFT & RESP.

PRO PER: 16866 ROYAL HILLS DR.
ENCINO
S. Ward Dickson
9601 Wilshire Blvd. Beverly Hills 860 S. Carondelet Pasadena
Robert E. Cunis

BOLTON, GRAFF & DUNNE
210 W. 7th ST. LA.

Edward L. Lascher
2477 Harbor Blvd

JUN 12 1967

FILED RECORD ON APPEAL R[illegible] Appeal from JDMT. + VERDICT
NOTICE OF APPEAL FILED 7-16-67

JUL 26 1967 Aple notified pursuant to Rule [illegible]

JUL 27 1967 Filed substitution of atty for plff

SEP 15 1967 FILED APPELLANT'S OPENING BRIEF

OCT 17 1967 Filed association of atty for deft.

NOV 27 1967 Resp notified pursuant to [illegible]

DEC 27 1967 FILED RESPONDENT'S BRIEF

FEB 9 - 1968 FILED APPELLANT'S REPLY BRIEF.

Trans to Div 2

JUL 23 1968 ORDERED ON CALENDAR

JUL 29 1968 Transcript received from Superior Court

SEP 10 1968 Filed notice of Mot for substitution of atty for plff

SEP 12 1968 ARGUED AND SUBMITTED Mot to substitute atty for plff granted.

OCT 10 1968 The judgment is affirmed. (Ct-Not-Pub.)
Fleming, J.

Roth, P.J.
Kaufman, J. Pro Tem.

OCT 25 1968

I, CLAY ROBBINS, JR., Clerk of the Court of Appeal in and for the Second Appellate District of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of the register of actions of 2nd Civil 31906 Lopo, etc. vs Saks Fifth Avenue, etc.

NOTICE OF APPEAL FILED 1-16-67

JUL 26 1967 Aple notified pursuant to Rule 17c — Assigned to Div. 2 TWP

JUL 27 1967 Filed subst. of atty for plff — Not. 9-15-stip

SEP 15 1967 FILED APPELLANT'S OPENING BRIEF

OCT 17 1967 Filed association of atty for deft. — Resp 11-15

NOV 27 1967 Resp notified pursuant to Rule 17b

DEC 27 1967 FILED RESPONDENT'S BRIEF

FEB 9 - 1968 FILED APPELLANT'S REPLY BRIEF. — Oral Stmt 2-9-68

Trans to Div 2

JUL 23 1968 ORDERED ON CALENDAR — SEP 12 1968

JUL 29 1968 File Exhibits received from Superior Court.

SEP 10 1968 Filed notice of Mot for subst of atty for plff

SEP 12 1968 ARGUED AND SUBMITTED Mo to subst atty for plff granted.

OCT 10 1968 The judgment is affirmed. (Card-Non-Pub.)

Fleming, J.

Roth, P. J.

Stutler, J. Pro-Tem.

OCT 25 1968

I, CLAY ROBBINS, JR., Clerk of the Court of Appeal in and for the Second Appellate District of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of the register of actions of 2nd Civil 31906 Lopo, etc. vs Saks Fifth Avenue, etc. - - -

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, the undersigned, say:

I am and was at all times herein mentioned a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to the within action or proceeding; that my business address is 608 South Hill Street, Los Angeles, California 90014.

That on May 22, 1969, I served the within SUPPLEMENT TO JURISDICTIONAL STATEMENT AND REPLY TO APPELLEE'S MOTION TO DISMISS, upon the DEFENDANT in said cause, by depositing one copy thereof, enclosed in a sealed envelope, with postage thereon fully prepaid, in a mail box regularly maintained by the Government of the United States at Los Angeles, California, addressed to the attorneys of record for said Defendant at their office addresses as follows:

Bolton, Groff & Dunne
210 West 7th Street
Los Angeles, Calif.

Edward L. Lascher
2497 Harbor Blvd.
Ventura, Calif.

United States Supreme Court
Office of Clerk
1 First Street North East
Washington, D.C.

Executed on May 22, 1969, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

_____